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**(2012) 10 AHC CK 0070**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 48461 of 2012

M/s. Neelam Restorant

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 12-10-2012

**Acts Referred:**

Child Labour (Prohibition and Regulation) Act, 1986 — Section 11, 12, 14, 16, 17  
Constitution of India, 1950 — Article 141, 24, 39(e), 39(f), 41

**Citation :** (2012) 11 ADJ 433 : (2013) 1 AWC 668 : (2013) 136 FLR 678

**Hon'ble Judges :** Sunita Agarwal, J;Ashok Bhushan, J

**Bench :** Division Bench

**Advocate :** Mukesh Kumar, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Ashok Bhushan, J.—Heard Sri Mukesh Kumar, learned Counsel for the petitioner and Smt. Archana Srivastava, learned Standing Counsel appearing for the State-respondents. In pursuance of the order dated 20th September, 2012, learned Standing Counsel has obtained instructions and by consent of the learned Counsel for the parties, the writ petition is being finally decided.

2. By this writ petition, the petitioner has prayed for quashing the citation dated 30th July, 2012 issued to the petitioner for recovery of an amount of Rs. 20,000/- on account of engagement of child labour.

3. On 16th June, 2010 the Labour Enforcement Officer/Inspector conducted a survey of petitioner's restaurant at 9.35 A.M. in which survey a child labour, namely, Shani Kumar son of Arman Singh aged 13 years was found to be engaged in contravention of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as the 1986 Act). A complaint dated 27th April, 2011 was filed by the said Labour Enforcement Officer/Inspector under the 1986 Act before the Chief Judicial Magistrate, Farrukhabad. The complaint filed by the Labour Enforcement Officer/Inspector is pending

consideration before the Chief Judicial Magistrate.

4. Learned Counsel for the petitioner, challenging the citation dated 30th July, 2012, contends that the allegation that a child labour was found engaged in petitioner's concern is incorrect. It is stated that at the time of inspection the alleged child labour Shani Kumar son of Arman Singh, who was about 13 years of age, was taking food. He further contends that in the complaint the petitioner appeared and was granted bail. It is submitted that recovery proceeding cannot be initiated since the complaint for trial u/s 3 of the 1986 Act is still pending in the Court of Chief Judicial Magistrate.

5. Learned Standing Counsel, after obtaining instructions from the respondents, submits that the recovery of Rs. 20,000/- has been initiated against the petitioner in pursuance of the directions issued by the Apex Court in the case of M.C. Mehta Vs. State of Tamil Nadu and others, , decided on 10th December, 1996. She submits that State Government has also issued a Government order dated 5th June, 1998 in compliance of the above judgment of the Apex Court dated 10th September, 1996. It is further submitted that recovery can be initiated on contravention of provisions of the 1986 Act by the petitioner and the fact that complaint is pending before the Chief Judicial Magistrate does not preclude the respondents in initiating the proceeding for recovery.

6. We have considered the submissions of learned Counsel for the parties and perused the record.

7. The Child Labour (Prohibition and Regulation) Act, 1986 has been enacted to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. Section 3 of the 1986 Act contains provisions of prohibition of employment of children in certain occupations and processes. Section 3 of the 1986 Act is quoted below:

3. PROHIBITION OF EMPLOYMENT OF CHILDREN IN CERTAIN OCCUPATIONS AND PROCESSES.-- No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on: Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

8. In Part-A of the Schedule to the 1986 Act, list of occupations has been given in which at Item No. 15 employment of children in dhabas (road side eateries), restaurants etc. is prohibited. Item No. 15 of the Part-A of the Schedule to the 1986 Act is quoted below:

15. Employment of children in dhabas (road side eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres.

9. Section 14 of the 1986 Act relates to penalties. Section 14 of the 1986 Act is quoted below:

14. PENALTIES.--(1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than, three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence u/s 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever-

(a) fails to give notice as required by Section 9, or

(b) fails to maintain a register as required by Section 11 or makes any false entry in any such register; or

(c) fails to display a notice containing an abstract of Section 3 and this section as required by Section 12; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

10. Section 16 of the 1986 Act relates to procedure relating to offences and Section 17 of the 1986 Act provides for appointment of Inspectors. Sections 16 and 17 of the 1986 Act are quoted below:

16. PROCEDURE RELATING TO OFFENCES.--(1) Any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.

(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

17. APPOINTMENT OF INSPECTORS.--The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

11. In a two Judge judgment of the Apex Court in the case of Anant Construction Co. v. Government Labour Officer & Inspector, (2006)9 SCC 225, the Inspector after conducting survey had directed the employer to pay compensation, the said action of the Inspector was held to be beyond his jurisdiction. It was held that the jurisdiction of the Inspector does not extend to trying of the complaint.

12. A Public Interest Litigation in Writ Petition (C) No. 465 of 1986 has already been entertained by the Apex Court suo motu on account of an unfortunate incident in one of the Shivakashi Crackers Company at Tamil Nadu where 39 persons died. The three Judge Bench passed an order in the aforesaid public interest litigation on 10th December, 1996, after obtaining report of the Committee. The Apex Court in the aforesaid judgment considered relevant constitutional provisions pertaining to prohibition of child labour i.e. Articles 24, 39(e), 39(f), 41, 45 and 47 of the Constitution. Article 24 of the Constitution of quoted below:

24. Prohibition of employment of children in factories, etc.--No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

13. The Apex Court noted in the judgment that in respect of child labour punishment up to one year and fine of Rs. 20,000/- has been provided in the 1986 Act, however, the said provisions are not effective instruments for removal of children working in industry. It is useful to quote paragraphs 26, 27 and 29 of the said judgment:

26. Section 14 of the Act has provided for punishment upto 1 year (minimum being 3 months) or with fine upto Rs. 20,000/- (minimum being ten thousand) or with both, to one who employs or permits any child to work in contravention of provisions in section 3. Even so, it is common experience that child labour continues to be employed. As to why this has happened despite the Act of 1986, has come to be discussed by Neera Burra, in her afore- mentioned book at pages 246 to 230 of the 1995 edition. It has been first pointed out that the occupations and processes dealt by the Act are same about which the repealed statute (Employment of Children Act, 1938) had mentioned, except that in Part B, one process has been added-the same being "building and construction industry". According to Neera, there are a number of loopholes in the Act which has made it "completely ineffective instrument for the removal of children working in industry". One of the clear loopholes mentioned is that children can continue to work if they are a part of family of labour. It is not necessary for our purpose to go into other infirmities pointed out. Nonetheless, it deserves to be pointed out that the Act does not use the word "hazardous" anywhere, the implication of which is the children may continue to work in those processes not involving chemicals. Neera has tried to show how impracticable and unrealistic it is to draw a distinction between hazardous and non-hazardous processes in a particular industry. The suggestion given is that what is required is to list the whole industry as banned for child labour, which would make the task of enforcement simpler and strategies of evasion more difficult. Failure: causes

27. We have, therefore, to see as to why is it that child labour has continued despite the aforesaid statutory enactments. This has been a subject of study by a good number of authors. It would be enough to note what has been pointed out in "Indian Child Labour" by Dr. J.C. Kulshreshtha. This aspect has been dealt in

Chapter II. According to the author, the causes of failure are; (1) poverty; (2) low wages of the adult; (3) unemployment; (4) absence of schemes for family allowance; (5) migration to urban areas; (6) large families; (7) children being cheaply available; (8) non-existence of provisions for compulsory education; (9) illiteracy and ignorance of parents; and (10) traditional attitudes. Nazir Ahmad Shah has also expressed similar views in his book "Child Labour in India". In the article at pages 65 to 68 of 1993(3) SCJ (Journal Section) titled "Causes of the exploitation of child labour in India", Dr. Amar Singh and Raghuvinder Singh, who are attached to Himachal Pradesh University, have taken the same views.

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29. It may be that the problem would be taken care of to some extent by insisting on compulsory education. Indeed, Neera thinks that if there is at all a blueprint for tackling the problem of child labour, it is education. Even if it were to be so, the child of a poor parent would not receive education, if per force it has to earn to make the family meet both the ends, therefore, unless the family is assured of income allude, problem of child labour would hardly get solved; and it is this vital question which has remained almost unattended. We are, however, of the view that till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o'-the wisp. Now, if employment of child below that age of 14 is a constitutional indication insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfillment of legislative intendment behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986. Taking guidance therefrom, we are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs. 20,000/-; and the Inspectors, whose appointment is visualised by section 17 to secure compliance with the provisions of the Act, should do this job. The inspectors appointed u/s 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000/- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the concerned child. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high yielding scheme of any nationalised bank or other public body.

14. The Apex Court, as noted above, in paragraph 29 of the judgment has held, Taking guidance therefrom, we are of the view that offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs. 20,000; and the Inspectors, whose appointment is visualised by Section 17 to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed u/s 17 would see that for each child employed in violation of the provisions of the Act, the employer concerned pays Rs. 20,000 which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund".

15. The ultimate directions were issued in paragraphs 33(7) and 33(9) of the judgment, which are quoted below:

33(7) A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. Further, in view of the magnitude of the task, a separate cell in the Labour Department of the appropriate Government would be created. Monitoring of the scheme would also be necessary and the Secretary of the Department could perhaps do this work. Overall monitoring by the Ministry of Labour, Government of India, would be beneficial and worthwhile.

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33(9). We should also like to observe that on the directions given being carried out, penal provision contained in the aforementioned 1936 Act would be used where employment of a child labour, prohibited by the Act, would be found.

16. The three Judge Bench in M.C. Mehta's case (supra) thus had issued directions for realisation of compensation from the employer on contravention of provisions of Section 3 of the 1986 Act. The said directions are in addition to penal provisions which can also be enforced as is clear from the directions in paragraph 33(9) of the judgment. The aforesaid judgment thus clearly indicates that realisation of compensation from employer on contravention of Section 3 of the 1986 Act is not to wait till complaint filed for penalty is decided by the competent Court. The Inspectors, who have been appointed u/s 17 of the 1986 Act, have been entrusted with the duties of enforcement of the 1986 Act and realise compensation from employer who employ any child below the age of 14 years in any occupation as mentioned in Part-A of the Schedule or in any of the processes as mentioned in Part-B.

17. In the present case, the petitioner himself has brought on the record copy of the complaint which indicates that Inspector on survey made on 11th June, 2010 found a child labour of 13 years aged working. The directions of the Apex Court in M.C. Mehta's case (supra), which directions are referable to Article 141 of the Constitution of India, have rightly been followed by the Inspector. Learned Standing Counsel has also referred to a Government order dated 5th June, 1998, which has been placed by the learned Standing Counsel for perusal of the Court, by which the State Government has issued direction in compliance of the

directions of the Apex Court in M.C. Mehta's case (supra) for recovery of Rs. 20,000/- from the guilty employer as arrears of land revenue. Thus the citation to recover Rs. 20,000/- as arrears of land revenue on the basis of survey made by the Inspector on 11th June, 2010 is clearly justified. We do not find any error in the citation which may warrant interference by this Court in exercise of writ jurisdiction. However, it is necessary to observe that the recovery of Rs. 20,000/- on the ground of violation of Section 3 of the 1986 Act on the basis of survey shall always be subject to decision on the complaint if the same is filed by the Inspector on the basis of survey report.

18. In the present case, the complaint has already been filed and the same is pending. In the event the outcome of the complaint is that there was no violation of the provisions of Section 3 of the 1986 Act by the employer, the employer can always request the Inspector to refund the amount already realised. The basis for realisation of amount of Rs. 20,000/- is an act of offending employer which is in contravention of the provisions of the 1986 Act. In the event it is found by the Magistrate trying the complaint that there was no contravention of the provisions of Section 3 of the 1986 Act by the employer, the employer from whom the amount has been recovered, can always request for refund of the same.

19. In result, the prayer of the petitioner for quashing the citation dated 30th July, 2012 cannot be accepted and is refused. However, it shall be open for the petitioner to seek refund of the amount in the event it is held in the complaint filed against him that no offence is committed by the employer u/s 3 of the 1986 Act. Subject to above, the writ petition is dismissed.